

DS
amend

An XbaI site and an NcoI site were introduced to the 5' end and 3' end, respectively, of the PCR fragment by using these specifically designed primers. The NcoI site includes the ATG start codon of the SAMS coding region. The resulting 1314 bp fragment is shown in SEQ ID NO:6 and includes the SAMS promoter and the translation leader region, which is interrupted by the 591 nucleotide intron.

✓
In the Claims

Kindly delete claims 1-11 and submit the following new claims:

D6
13/12. (new) An isolated nucleic acid fragment having constitutive promoter activity selected from the group consisting of:

a) an isolated nucleic acid fragment comprising the nucleic acid sequence of SEQ ID NO:6 or SEQ ID NO:14 or a subfragment thereof having constitutive promoter activity; and

b) an isolated nucleic acid fragment which can hybridize with any of the nucleotide sequences set forth in SEQ ID NO:6 or SEQ ID NO:14 under stringent conditions. CARL AND ZHONSEN: IS THIS OK? CONDITIONS IN EXAMPLE 3 WERE STRINGENT.

14/13. (new) A chimeric gene comprising at least one heterologous nucleic acid fragment operably linked to the isolated nucleic acid fragment of claim 1.

15/14. (new) An expression construct comprising the chimeric gene of claim 13. 14

16/15. (new) A plant comprising the chimeric gene of claim 13. 14

17/16. (new) The plant of claim 15 wherein said plant is a monocot selected from the group consisting of corn, rice, wheat, barley and palm.

18/17. (new) The plant of Claim 16 wherein said plant is a dicot selected from the group consisting of *Arabidopsis*, soybean, oilseed *Brassica*, peanut, sunflower, safflower, cotton, tobacco, tomato, potato, and cocoa.

19/18. (new) The plant of claim 17 wherein said plant is soybean.

20/19. (new) Seed of the plant as in any one of Claims 15, 16, 17 or 18 wherein said seed comprises in its genome the chimeric gene of claim 13. 14

21/20. (new) A method of increasing or decreasing the expression of at least one heterologous nucleic acid fragment in a plant cell which comprises:

(a) transforming a plant cell with the chimeric gene of Claim 13. 14

(b) growing at least one fertile mature plant from the transformed plant cell of step (a);

(c) selecting at least one plant containing a transformed plant cell wherein the expression of the heterologous nucleic acid fragment is increased or decreased.

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21. (new) The method of Claim ²¹20 wherein the plant is a monocot selected from the group consisting of corn, rice, wheat, barley and palm.

²³22. (new) The method of Claim ²²21 wherein the plant is a dicot selected from the group consisting of *Arabidopsis*, soybean, oilseed *Brassica*, peanut, sunflower, safflower, cotton, tobacco, tomato, potato, and cocoa.

²⁴23. (new) The method of Claim ²³22 wherein the plant is soybean.

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